

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

JUSTIN EDMISTEN,

Case No. 3:22-cv-00158-MMD-CLB

Plaintiff,

ORDER

v.

WILLIAM L. GITTERE, et al.,

Defendants.

This action began with a *pro se* civil rights complaint filed under 42 U.S.C. § 1983 by a state prisoner. Plaintiff has submitted an application to proceed *in forma pauperis*. (ECF No. 1.) Based on the financial information provided, the Court finds that Plaintiff is unable to prepay the full filing fee in this matter.

The Court entered a screening order on August 30, 2022. (ECF No. 7.) The screening order imposed a 90-day stay and the Court entered a subsequent order in which the parties were assigned to mediation by a court-appointed mediator. (ECF Nos. 7, 9.) The Office of the Attorney General has filed a status report indicating that settlement has not been reached and informing the Court of its intent to proceed with this action. (ECF No. 25.)

Plaintiff also filed a motion for preliminary injunction. (ECF No. 11.) Defendants filed a response and Plaintiff submitted a reply. (ECF Nos. 12, 13.) Plaintiff seeks immediate release due to the unsanitary conditions at the prison or to have half of Ely State Prison shut down. (ECF No. 11 at 5.)

Injunctive relief, whether temporary or permanent, is an “extraordinary remedy, never awarded as of right.” *Winter v. Nat. Res. Def. Council*, 555 U.S. 7, 24 (2008). “A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the

merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.” *Am. Trucking Ass’ns, Inc. v. City of L.A.*, 559 F.3d 1046, 1052 (9th Cir. 2009) (quoting *Winter*, 555 U.S. at 20). Furthermore, under the Prison Litigation Reform Act (“PLRA”), preliminary injunctive relief must be “narrowly drawn,” must “extend no further than necessary to correct the harm,” and must be “the least intrusive means necessary to correct the harm.” 18 U.S.C. § 3626(a)(2).

The Court denies the motion for preliminary injunction (ECF No. 11). Plaintiff seeks to be released from prison due to unsanitary conditions or to shut half of the prison down. However, these solutions are not the least intrusive means to correct living in unsanitary conditions and are not narrowly drawn to correct the unsanitary conditions.

For the foregoing reasons, it is ordered that:

1. Plaintiff’s application to proceed *in forma pauperis* (ECF No. 1) is **granted**. Plaintiff shall not be required to pay an initial installment of the filing fee. In the event that this action is dismissed, the full filing fee must still be paid under 28 U.S.C. § 1915(b)(2).

2. Plaintiff is permitted to maintain this action to conclusion without the necessity of prepayment of any additional fees or costs or the giving of security therefor.

3. Under 28 U.S.C. § 1915, as amended by the PLRA, the Nevada Department of Corrections will forward payments from the account of **Justin Edmisten, #1047583**, to the Clerk of the United States District Court, District of Nevada, 20% of the preceding month’s deposits (in months that the account exceeds \$10.00) until the full \$350 filing fee has been paid for this action. The Clerk of the Court will send a copy of this order to the Finance Division of the Clerk’s Office. The Clerk will send a copy of this order to the attention of **Chief of Inmate Services for the Nevada Department of Corrections**, P.O. Box 7011, Carson City, NV 89702.

4. The Clerk of the Court shall electronically **serve** a copy of this order and a copy of Plaintiff’s first amended complaint (ECF No. 6) on the Office of the Attorney

1 General of the State of Nevada by adding the Attorney General of the State of Nevada to
2 the docket sheet. This does not indicate acceptance of service.

3 5. Service must be perfected within 90 days from the date of this order under
4 Fed. R. Civ. P. 4(m).

5 6. Subject to the findings of the screening order (ECF No. 7), within 21 days
6 of the date of entry of this order, the Attorney General's Office shall file a notice advising
7 the Court and Plaintiff of: (a) the names of the defendants for whom it accepts service;
8 (b) the names of the defendants for whom it does not accept service, and (c) the names
9 of the defendants for whom it is filing the last-known-address information under seal. As
10 to any of the named defendants for whom the Attorney General's Office cannot accept
11 service, the Office shall file, under seal, but shall not serve the inmate Plaintiff the last
12 known address(es) of those defendant(s) for whom it has such information. If the last
13 known address of the defendant(s) is a post office box, the Attorney General's Office shall
14 attempt to obtain and provide the last known physical address(es).

15 7. If service cannot be accepted for any of the named defendant(s), Plaintiff
16 shall file a motion identifying the unserved defendant(s), requesting issuance of a
17 summons, and specifying a full name and address for the defendant(s). For the
18 defendant(s) as to which the Attorney General has not provided last-known-address
19 information, Plaintiff shall provide the full name and address for the defendant(s).

20 8. If the Attorney General accepts service of process for any named
21 defendant(s), such defendant(s) shall file and serve an answer or other response to the
22 first amended complaint (ECF No. 6) within 60 days from the date of this order.


23 9. Plaintiff shall serve upon defendant(s) or, if an appearance has been
24 entered by counsel, upon their attorney(s), a copy of every pleading, motion, or other
25 document submitted for consideration by the Court. If Plaintiff electronically files a
26 document with the Court's electronic-filing system, no certificate of service is required.
27 Fed. R. Civ. P. 5(d)(1)(B); LR IC 4-1(b); LR 5-1. However, if Plaintiff mails the document
28 to the Court, Plaintiff shall include with the original document submitted for filing a

1 certificate stating the date that a true and correct copy of the document was mailed to the
2 defendants or counsel for the defendants. If counsel has entered a notice of appearance,
3 Plaintiff shall direct service to the individual attorney named in the notice of appearance,
4 at the physical or electronic address stated therein. The Court may disregard any
5 document received by a district judge or magistrate judge which has not been filed with
6 the Clerk, and any document received by a district judge, magistrate judge, or the Clerk
7 which fails to include a certificate showing proper service when required.

8 10. This case is no longer stayed.

9 11. Plaintiff's motion for preliminary injunction (ECF No. 11) is denied without
10 prejudice.

11 DATED THIS 15th Day of March 2023.

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14 MIRANDA M. DU
15 CHIEF UNITED STATES DISTRICT JUDGE
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